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No. 06-332

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In The

Supreme Court of the United States

PHYLLIS BROWN,

Petitioner,

v.

DEKALB COUNTY, GEORGIA,

Respondent.

On Petition For Writ Of Certiorari To The Georgia Court Of Appeals

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONSE TO PETITIONER'S QUESTION PRESENTED FOR REVIEW

Petitioner's statement of the question presented misconstrues this Court's precedent, including *McMillian v. Monroe County, Alabama* because the "arm of the state" analysis applied to determine Eleventh Amendment immunity is not relevant here. A more appropriate statement of the question presented for review is whether the Georgia Court of Appeals properly applied the final policymaker analysis of *Monell v. New York City Dept. of Social Servs.* and *McMillian v. Monroe County, et al.* when, after weighing competing factors, it concluded that in this case former sheriff Sidney Dorsey was not a policymaker for DeKalb County for purposes of liability under 42 U.S.C. § 1983.

RESPONSE TO THE PETITIONER'S STATEMENT OF THE CASE

Pursuant to Supreme Court Rule 15.2, Respondent points to an implicit misstatement of fact that arises from the trial court's order on a motion for partial summary judgment as to the former sheriff Sidney Dorsey and co-defendant, Patrick Cuffy, a former employee of the sheriff's office.[1] It appears that the trial court was confused about whether the suit was brought against the former sheriff in his official capacity. The Complaint and Amended Complaint filed in this action do not, however, contain any official capacity claims against the former sheriff, the alleged final policymaker.[2]

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[1] Petitioner's Appendix 19a.

[2] *See* Respondent's Appendix 1-29.

TABLE OF CONTENTS

Page

Response to Petitioner's Question Presented for Review i

Response to Petitioner's Statement of the Case ii

Reasons for Denying the Petition 1

RESPONSE TO PETITIONER'S REASONS FOR GRANTING THE WRIT 3

I. The Georgia Court of Appeals' decision adheres to this Court's § 1983 jurisprudence and, therefore, this Court's review is not warranted 3

II. The Circuit Courts of Appeals' decisions discussed by the Petition as indicative of a split between the circuits are irrelevant to this case. The "sea" of § 1983 jurisprudence remains unchanged 4

A. In *McMillian* this Court anticipated that there would not be a uniform national characterization for all sheriffs 5

B. The Eleventh Circuit Court of Appeals correctly applied *McMillian* 6

C. An overwhelming majority of the decisions described as indicative of a split between the Circuit Courts of Appeal address Eleventh Amendment immunity and are irrelevant to the case at bar 8

III. Under Georgia law former sheriff Dorsey was a policymaker for the State of Georgia for the functions at issue. The hypothetical possibility that local officials may exercise autonomous power independent from counties and States is of no consequence under the facts of this case 12

TABLE OF CONTENTS – Continued

Page

A. This case does not involve Eleventh Amendment immunity..... 13

B. The Georgia Court of Appeals correctly found that former sheriff Dorsey was not a policymaker for the County for the functions at issue..... 14

Conclusion..... 20

TABLE OF AUTHORITIES

Page

CASES

Bd. of Commrs. of Dougherty County v. Saba, 278 Ga. 176 (2004) 18

Bd. of Commrs. of Randolph County v. Wilson, 260 Ga. 482 (2004) 18

Brewster v. Shasta County, 275 F.3d 803 (9th Cir. 2001) 10

Brown v. Jackson, 221 Ga. App. 200 (1996) 18

Cash v. Granville County Bd. of Educ., 242 F.3d 219 (4th Cir. 2001) 9, 13

Chaffin v. Calhoun, 262 Ga. 202 (1992) 17, 18

City of St. Louis v. Praprotnik, 485 U.S. 112 (1988)..... 6

Cortez v. County of Los Angeles, 294 F.3d 1186 (9th Cir. 2002) 10

Cozzo v. Tangipahoa Parish Council-President Government, 279 F.3d 273 (5th Cir. 2002) 9

DeGenova v. Sheriff of DuPage County, 209 F.3d 973 (7th Cir. 2002).....10, 13

Franklin v. Zaruba, 150 F.3d 682 (7th Cir. 1998) ...5, 10, 13

Grayson v. Peed, 195 F.3d 692 (4th Cir. 1999)..... 9

Grayson v. Royer, 529 U.S. 1067, 120 S.Ct. 1673 (2000)..... 10

Grech v. Clayton County, 335 F.3d 1326 (11th Cir. 2003).....*passim*

Harter v. Vernon, 101 F.3d 334 (4th Cir. 1996)..... 9

Henry v. County of Shasta, 132 F.3d 512 (9th Cir. 1997)..... 10

TABLE OF AUTHORITIES – Continued

Page

Hess v. Port Authority Trans-Hudson, Corp., 513 U.S. 30 (1994) 2, 13

Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005) 10

Jett v. Dallas Indep. School Dist., 491 U.S. 701 (1989) 15

Kentucky v. Graham, 473 U.S. 159 (1985) 2

Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency, 440 U.S. 391 (1979) 11, 13

Lowe v. Jones County, 231 Ga. App. 372, 499 S.E.2d 348 (1998) 18

Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003) 5, 7

Mayo v. Fulton County, 220 Ga. App. 825 (1996) 18

McMillian v. Monroe County, Alabama, 520 U.S. 781 (1997) ..... *passim*

Monell v. New York City Dep't of Social Servs., 436 U.S. 658 (1978) 3, 13, 14

Northern Ins. Co. of N.Y. v. Chatham County, 126 S.Ct. 1689 (2006) 11, 13

Pembaur v. City of Cincinnati, 475 U.S. 469 (1986) 14

Purcell v. Toombs County, Georgia, 400 F.3d 1313 (11th Cir. 2005) 7

Scott v. O'Grady, 975 F.2d 366 (7th Cir. 1992) 9

Streit v. County of Los Angeles, 236 F.3d 552 (9th Cir. 2001) 5, 10, 11

Wayne County v. Herrin, 210 Ga. App. 747, 437 S.E.2d 793 (1993). 18

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONS AND STATUTES

U. S. Constitution
Eleventh Amendment ..... *passim*

28 U.S.C. § 1983 ..... *passim*

Georgia Constitution, 1983,
Art. IX, § 1, ¶ III 17
Art. IX, § 2, ¶ 1(c) 17

O.C.G.A. § 15-16-10 17

O.C.G.A. § 15-16-23 17

O.C.G.A. § 15-16-26(c) 18

REASONS FOR DENYING THE PETITION

There is no compelling reason for this Court to grant the Petition in this case. Supreme Court Rule 10 provides that a petition for a writ of certiorari will be granted only for compelling reasons. Subparagraphs (a) through (c) of that rule indicate the character of the reasons this Court considers in making its determination to grant or deny a petition. Although not explicitly stated, the Petition appears to urge this Court to grant certiorari pursuant to subparagraph (c) of Rule 10 on the basis that a state court, i.e. the Georgia Court of Appeals, has decided an important question of federal law that has not been, but should be settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. This case does not meet the standard required for review under Supreme Court Rule 10.

There is nothing about this case that merits this Court granting certiorari to revisit the jurisprudential landscape regarding § 1983 liability of counties. The Georgia Court of Appeals did not err in its application of *McMillian v. Monroe County, Alabama*,[3] and contrary to Petitioner's assertions Eleventh Amendment immunity is simply not a relevant consideration in this case. This case turns on the issue of whether Respondent DeKalb County, Georgia can be liable under § 1983 for a politically motivated murder by sheriff as a final policymaker for the County. This case is not about whether DeKalb County can be liable for a judgment entered against former sheriff Sidney Dorsey in his official capacity, as Dorsey was not

[3] 520 U.S. 781, 117 S.Ct. 1734 (1997).

sued on his official capacity.[4] Petitioner apparently seeks this Court's review in her effort to recover from the County approximately $326,000,000 in compensatory damages awarded as part of a judgment against former sheriff Sidney Dorsey in his *individual* capacity.[5] While a judgment was secured against several defendants in their individual capacities, there has been no trial and no judgment with respect to DeKalb County or any defendant sued in their official capacity.[6]

Petitioner spends a considerable amount of time addressing cases from various Circuit Courts of Appeals she contends misinterpret and misapply *McMillian v. Monroe County* and this Court's Eleventh Amendment immunity jurisprudence. The Petition, however, fails to address any misinterpretation or misapplication of *McMillian* by the Georgia Court of Appeals in the decision at issue.[7] Significantly, none of the errors alleged by Petitioner in other cases are present in the decision of the Georgia Court of Appeals.

The Georgia Court of Appeals did not err in its application of *McMillian* and related precedent. Perhaps the alleged conflicts in Eleventh Amendment immunity jurisprudence would be relevant if suit had been filed against former sheriff Dorsey in his *official capacity,* because under this Court's decision in *Kentucky v. Graham*, "victory in an

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[4] Respondent's Appendix 1-29.

[5] Petition, 4.

[6] Respondent's Appendix 32-33.

[7] Eleventh Amendment immunity shields states and certain agencies exercising state power from being sued in federal court without their consent. *Hess v. Port Authority Trans-Hudson Corporation*, 513 U.S. 30, 115 S. Ct 394 (1994).

official-capacity suit imposes liability on the entity that the officer represents."[8] In this case, however, no such claim was pled or pursued.

The Georgia Court of Appeals' decision closely follows the analytical framework of *McMillian*, evaluating Georgia law and answering the question of whether, based on state law, the governmental official is a final policymaker for the local government in the particular area or function alleged to have resulted in the constitutional violation.[9] As set forth in Section III of this Brief, the Georgia Court of Appeals made the necessary inquiry and used the appropriate analysis in reaching its decision that former sheriff Dorsey was not a policymaker for DeKalb County for the functions at issue.

RESPONSE TO PETITIONER'S REASONS FOR GRANTING THE WRIT

I. The Georgia Court of Appeals' decision adheres to this Court's § 1983 jurisprudence and, therefore, this Court's review is not warranted.

The Georgia Court of Appeals' well-reasoned and soundly based decision that the sheriff was not a final policymaker for the County on the issues of use of deadly force and use of sheriff's department personnel and resources foreclosed the Petitioner from any pursuit of her claims against the County. The Court examined whether the sheriff was a final policymaker for the County on the

[8] 473 U.S. 159, 105 S.Ct. 3099 (1985) (quoting *Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 690, n.55, 98 S.Ct. 2018, 2035-2036 n.55 (1978)).

[9] *McMillian*, 520 U.S. at 785.

particular function at issue as required by *McMillian*.[10] The Georgia Court of Appeals examined how sheriffs operate in Georgia after a review of the Georgia constitution, statutes and case decisions. In addition, the Georgia Court of Appeals' decision references *Grech v. Clayton County, Georgia*,[11] a decision of the Eleventh Circuit Court of Appeals that closely follows this Court's analysis in *McMillian* and includes an extensive discussion of Georgia's constitution, statutes and case law regarding the status of sheriffs, their role and their relationship to the State and counties in Georgia.

In *McMillian* this Court indicated its traditional deference to the expertise of state-based jurists in interpreting state law.[12] The Georgia Court of Appeals and Eleventh Circuit Court of Appeals are deserving of such deference in this case.

II. The Circuit Courts of Appeals' decisions discussed by the Petition as indicative of a split in the circuits are irrelevant to this case. The "sea" of § 1983 jurisprudence remains unchanged.

Contrary to the Petitioner's assertion, there has not been a "sea change" in § 1983 liability since *McMillian*. In the post-*McMillian* years, litigants on both sides of the so-called split or chasm have attempted to secure review regarding decisions reached by the Eleventh, Seventh and

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[10] 520 U.S. at 785; Petition, App. 12a.

[11] 335 F.3d 1326 (11th Cir. 2003).

[12] 520 U.S. at 786 ("We generally accord great deference to the interpretation and application of state law by the Courts of Appeals").

Ninth Circuit Courts of Appeal concerning the status of sheriffs and the availability of Eleventh Amendment immunity. This Court has declined to accept those cases.[13] Arguably, this indicates that this Court as recently as 2003 did not believe that revisiting *McMillian* or the decisions that constitute this Court's Eleventh Amendment jurisprudence was necessary. A similar denial is warranted here because the Georgia Court of Appeals adhered to *McMillian* and used the appropriate analytical framework set forth therein.

A. In *McMillian* this Court anticipated that there would not be a uniform national characterization for all sheriffs.

Petitioner calls upon this Court to grant certiorari for the purpose of articulating a "uniform test" to be applied in both state and federal courts with respect to the § 1983 liability of counties in order to yield consistency in the application of the various factors in the *McMillian* analysis.[14] No such test is appropriate, however, because as recognized in *McMillian*, due to the federal system the role of sheriffs and counties varies from State to State; "there is no inconsistency created by court decisions that declare sheriffs to be county officers in one State, and not in another."[15] There have been different outcomes among the circuit courts of appeals precisely because *McMillian* involves an analysis that takes account of state law

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[13] This Court has denied certiorari in *Manders v. Lee*, 540 U.S. 1101 (2003); *Franklin v. Zaruba*, 525 U.S. 1141 (1999); *Streit v. County of Los Angeles*, 534 U.S. 823 (2001).

[14] Petition, 9.

[15] 520 U.S. at 795, 117 S.Ct. at 1741.

regarding sheriffs and the particular function at issue.[16] The state-law specific inquiry required by *McMillian* accounts for the divergent outcomes that the Petition mischaracterizes as a split in the circuits arising from a misinterpretation of *McMillian*. The different outcomes amongst the circuit courts of appeals simply reflect what this Court has described as "the rich variety of ways in which the power of government is distributed among a host of different officials and official bodies."[17]

B. The Eleventh Circuit Court of Appeals correctly applied *McMillian*.

Petitioner describes the Eleventh Circuit Court of Appeals as having misapplied *McMillian* to hold that Georgia sheriffs are essentially state executive officials for all purposes.[18] This is a mischaracterization of the Eleventh Circuit's decisions. Petitioner argues that the Eleventh Circuit broadly construed *McMillian* and "arm-of-the-state" -precedent to sweepingly characterize many local officials as state officers for purposes of § 1983 liability.[19] However, in the Eleventh Circuit's post-*McMillian* decisions considering the status of Georgia sheriffs there have not been any holdings of the breadth argued by the Petition.

For example, in *Grech,* the decision most immediately relevant to the case at bar, the Eleventh Circuit Court of

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[16] 520 U.S. at 785.

[17] *City of St. Louis v. Praprotnik*, 485 U.S. 112, 125, 108 S.Ct. 915, 925 (1988).

[18] Petition, 11.

[19] Petition, 16.

Appeals sitting *en banc* affirmed the trial court's finding that the sheriff was not a county policymaker for § 1983 liability purposes for his law enforcement conduct and policies regarding warrant information on state computer systems, or training and supervision of his employees in that regard.[20] *Grech*, on its face is a narrow holding.

In *Manders v. Lee,* a decision whose analysis was *not* relied upon below, the Eleventh Circuit considered a case in which a Georgia sheriff sued in his official capacity asserted Eleventh Amendment immunity in defense of a § 1983 claim.[21] There, the Eleventh Circuit Court of Appeals sitting *en banc* reversed the denial of summary judgment. The Eleventh Circuit, using the "arm-of-the-state" analysis, evaluated Georgia law regarding the relationship among the state, the sheriff and the county and concluded that a Georgia sheriff wears a state hat for Eleventh Amendment purposes when creating and implementing a use-of-force policy at a jail.[22] On its face *Manders* is also a narrow holding.

Those cases indicate that there is nothing of the breadth alleged by Petitioner in the above post-*McMillian* decisions regarding Georgia sheriffs. As exemplified by *Purcell v. Toombs County, Georgia*, the Eleventh Circuit has left room for different conclusions with respect to the application of Eleventh Amendment immunity to the various areas of operation and functions of Georgia

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[20] *Grech v. Clayton County*, 335 F.3d at 1348.

[21] 338 F.3d at 1309, 1328.

[22] *Id.* at 1328.

sheriffs.[23] That is likely to be equally true of its consideration of whether a sheriff acts as a final policymaker for a Georgia county, particularly given *McMillian*'s explicit rejection of an "all or nothing" approach and the Eleventh Circuit's adherence to *McMillian* in *Grech*.[24]

C. An overwhelming majority of the decisions described as indicative of a split between the Circuit Courts of Appeal address Eleventh Amendment immunity and are irrelevant to the case at bar.

Many of the cases cited to by the Petition as indicative of a split among the circuit courts of appeals, and examples of misapplication and misinterpretation among those courts, do not actually involve a county's § 1983 liability for sheriffs, but rather the invocation of Eleventh Amendment immunity by a sheriff sued in his official capacity. This case does not involve Eleventh Amendment immunity because, as stated previously, there was no official capacity claim against the sheriff in this action. The sheriff did not invoke the Eleventh Amendment because it would not apply to him in his individual capacity; the sole basis upon which he was sued here.[25]

Petitioner attempts to create a split in the circuits out of a patchwork of decisions that do not have any bearing on the issue that the Georgia Court of Appeals considered, liability of final policymakers under § 1983. The Petition

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[23] 400 F.3d 1313, 1325 (11th Cir. 2005) (where the court "declined to determine that a Georgia sheriff wears a state hat for all purposes").

[24] *See* 335 F.3d 1326.

[25] Respondent's Appendix 1-29.

points to decisions of the Eleventh and Second Circuit Courts of Appeals on the one hand, and the Fourth, Seventh and Ninth Circuit Courts of Appeals on the other, as indicative of a split that warrants this Court's intervention. As set forth below, even a cursory examination of those cases illustrates their irrelevance to the case at bar.

Respondent has already discussed the Eleventh Circuit Court of Appeals' decisions cited by Petitioner as indicative of a split, and has shown this Court that subsequent to *McMillian* the Eleventh Circuit Court of Appeals has followed this Court's direction in analyzing § 1983 liability for counties, most certainly in the case relevant here, *Grech v. Clayton County*. With the exception of the Ninth Circuit cases, the decisions the Petition describes as indicative of a split amongst the circuits overwhelmingly involved Eleventh Amendment immunity[26] and or did not involve claims against counties.[27] There were perhaps a

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[26] *Scott v. O' Grady*, 975 F.3d 366 (7th Cir. 1992), *cert. denied*, 508 U.S. 942, 113 S.Ct. 2421 (1993), pre-dates *McMillian* and involved a suit against a sheriff and a deputy in their official capacities arising from an eviction. The two defendants invoked Eleventh Amendment immunity as a bar to the § 1983 claim and the court considered whether the defendants were agents of the state entitled to the protection of the Eleventh Amendment when they act to enforce orders issued by the state courts.

[27] *Harter v. Vernon*, 101 F.3d 334 (4th Cir. 1996) involved Eleventh Amendment immunity and pre-dates *McMillian*. *Cash v. Granville County Bd. of Educ.*, 242 F.3d 219 (4th Cir. 2001) was a Fair Labor Standards Act case that involved an assertion of Eleventh Amendment immunity and did not apply *McMillian*. Similarly, *Cozzo v. Tangipahoa Parish Council-President Government*, 279 F.3d 273 (5th Cir. 2002) involved Eleventh Amendment immunity and made the appropriate application of the multi-factor arm-of-the-state analysis. In *Grayson v. Peed*, 195 F.3d 692 (4th Cir. 1999), admittedly, the court did not cite *McMillian* and engaged in minimal analysis of the county's liability under § 1983, focusing solely on the issue of control. However, this

(Continued on following page)

few aberrant decisions from the Second and Seventh Circuit Courts of Appeals but again, those cases are simply not relevant to this case because they turned on assertions of Eleventh Amendment immunity.[28] Of the four Ninth Circuit Court of Appeals cases cited by Petitioner, all of the decisions involved the question of county liability under § 1983 for the acts of a sheriff, with one failing to make mention of *McMillian*.[29] With respect to the other three cases cited by Petitioner, *Streit v. County of Los Angeles*,[30] *Brewster v. Shasta County*[31] and *Cortez v. County of Los Angeles*,[32] it appears

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Court denied certiorari. See *Grayson v. Royer*, 529 U.S. 1067, 120 S.Ct. 1673 (2000).

[28] *Huminski v. Corsones*, 396 F.3d 53 (2nd Cir. 2004) (discussing the sheriff's sovereign immunity from liability for § 1983 claims filed against him in his official capacity as preserved by the Eleventh Amendment); *Franklin v. Zaruba*, 150 F.3d 682 (7th Cir. 1998), *cert. denied*, 525 U.S. 1141 (1999) (concluding, in a suit against the sheriff in his official capacity, that the sheriff was not acting as an agent of the state with respect to his exercise of custodial power. The court did not perform the arm-of-the-state analysis as one might expect, but instead used *McMillian* to decide the sheriff's entitlement to immunity); *DeGenova v. Sheriff of DuPage County*, 209 F.3d 973 (7th Cir. 2000) (in a suit against a county sheriff in his official capacity, the court repeated the flawed analysis used in *Franklin, supra*).

[29] *Henry v. County of Shasta*, 132 F.3d 512 (9th Cir. 1998), *cert. denied*, 525 U.S. 819 (1998).

[30] 236 F.3d 522 (9th Cir. 2001), *cert. denied*, 534 U.S. 823 (2001). The court cited to *McMillian* as the applicable analytical framework for deciding whether the county was subject to § 1983 liability for the unconstitutional actions of the sheriff. Thereafter, the court examined California's constitution, statutes and case law, ultimately concluding that the sheriff acts as a final policymaker for county in the administration and the release of inmates from the local jail. This Court denied the County's petition for a writ of certiorari.

[31] 275 F.3d 803 (9th Cir. 2001), *cert. denied*, 537 U.S. 814, 123 S.Ct. 75 (2002).

[32] 294 F.3d 1186, 1187 (9th Cir. 2002).

the Ninth Circuit followed the *McMillian* analysis with respect to county liability. Notably, the court was also required to discuss Eleventh Amendment immunity in *Streit*[33] and that discussion was appropriately separate and distinct from the discussion of county liability.

As discussed above, the majority of the decisions described by Petitioner as indicative of a split in the Circuit Courts of Appeals address Eleventh Amendment immunity and are irrelevant to the case at bar. This Court has not construed the Eleventh Amendment to afford protection to political subdivisions such as counties and cities[34] and this Court has repeatedly refused to extend that immunity to counties.[35] Accordingly, any alleged confusion among the Circuit Courts of Appeals regarding the application of Eleventh Amendment immunity, which the County did not and could not assert in this case, is simply not relevant here.

Accordingly, the Petition should be denied because this case does not involve Eleventh Amendment immunity and the concerns raised by the Petition are not relevant to this case. In rendering the decision at issue, the Georgia Court of Appeals closely followed this Court's analysis in *McMillian*, applying the same framework and evaluating similar legal provisions. For that reason, no further review is warranted.

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[33] 236 F.3d at 566.

[34] *Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 400-401, 99 S.Ct. 1171, 1177 (1979).

[35] *Northern Ins. Co. of N.Y. v. Chatham County, Georgia*, 126 S.Ct. 1689 (2006).

III. Under Georgia law former sheriff Dorsey was a policymaker for the State of Georgia for the functions at issue. The hypothetical possibility that local officials may exercise autonomous power independent from counties and States is of no consequence under the facts of this case.

Petitioner asserts that this Court should accept its Petition because the Georgia Court of Appeals' decision in this case does not address the possibility that local officials could exercise autonomous power independent from counties and states. In support of its argument, Petitioner seeks to draw distinctions between the decision of the Georgia Court of Appeals and several federal Circuit Court cases involving Eleventh Amendment immunity.[36] Petitioner argues that the Georgia Court of Appeals improperly applied the § 1983 policymaker test as an "all or nothing" proposition, and, according to Petitioner, incorrectly jumped from a finding that the county did not control the sheriff to the "conclusion that Dorsey must be a state officer immune under § 1983" while overlooking the possibility that the sheriff could be an autonomous, independent officer.[37]

Petitioner's argument is not persuasive because it mischaracterizes the decision of the Georgia Court of Appeals and appears to confuse Eleventh Amendment immunity analysis with the § 1983 final policymaker

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[36] Petition, 20-22.

[37] Petition, 20.

analysis set forth in *McMillian v. Monroe County, Alabama* and followed by the Georgia Court of Appeals.[38]

A. This case does not involve Eleventh Amendment Immunity.

Petitioner repeatedly attempts to draw contrasts between this case and cases turning on the grant or denial of Eleventh Amendment immunity in an effort to convince this Court to grant certiorari. Notably, neither *McMillian* nor the decision of the Georgia Court of Appeals in this case rely upon, or even discuss, Eleventh Amendment immunity. The Georgia Court of Appeals decision did *not* conclude that former sheriff Dorsey was an "arm-of-the-state" or otherwise rely upon the Eleventh Amendment jurisprudence of which Petitioner complains.[39] Petitioner's arguments to the contrary overlook the fact that this case turns on a different analysis, with the question being solely whether former sheriff Dorsey was a policymaker for DeKalb County on the issues of use of deadly force and use of sheriff's department personnel and resources.[40] The Georgia Court of Appeals properly analyzed the relevant question, with its analysis closely following this Court's decision in *McMillian*.[41]

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[38] *McMillian*, 520 U.S. 781, 117 S.Ct. 1734 (1997); *See Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 694, 98 S.Ct. 2018, 2037-2038 (1978).

[39] *Compare Northern Ins. Co. of New York*, 126 S.Ct. 1689; *Hess*, 513 U.S. 30, 115 S.Ct. 394; *Lake Country Estates, Inc.*, 440 U.S. 391, 99 S.Ct. 1171; *Franklin*, 150 F.3d 682; *DeGenova*, 209 F.3d 973; *Cash*, 242 F.3d 219.

[40] *See McMillian*, 520 U.S. at 786, 117 S.Ct. at 1737.

[41] 520 U.S. 781, 117 S.Ct. 1734.

B. The Georgia Court of Appeals correctly found that former sheriff Dorsey was not a policymaker for the County for the functions at issue.

Petitioner mischaracterizes the Georgia Court of Appeals' decision when he argues that the court's holding was based upon a mere lack of county control. To the contrary, the Georgia Court of Appeals applied the same analysis set forth in *McMillian*, looking at the elements of state law considered by this Court in that case, and found that because Georgia sheriffs are empowered, directed and controlled by state law in the functions at issue, former sheriff Dorsey was a policymaker for the State for purposes of § 1983 liability.[42] The decision was not based upon a knee-jerk reaction that "because county did not exercise authority over sheriff's use of deadly-force policies or law enforcement personnel and resources, the state exercised control over those functions."[43] Rather, the Georgia Court of Appeals conducted a detailed analysis and found that state empowerment, direction and control of former sheriff Dorsey in the functions at issue indicated that Dorsey was not a policymaker for DeKalb County when performing those functions.

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[42] As discussed in *Monell v. Dep't of Social Servs.*, a local government such as DeKalb County is liable under § 1983 only for its policies or customs that cause constitutional torts. 436 U.S. 658, 98 S.Ct. 2018 (1978). While DeKalb County takes issue with the Georgia Court of Appeals' conclusion that sheriff Dorsey's private decision to commit malice murder on his own time could constitute a policy under the reasoning of *Pembaur v. City of Cincinnati*, 475 U.S. 469, 106 S.Ct. 1292 (1986), we do not take up the issue at this juncture.

[43] *Compare* Petition, 20.

A comparison of the analytical framework of *McMillian* with the framework applied by the Georgia Court of Appeals in this case shows that the Petition for Writ of Certiorari should be denied. In *McMillian*, this Court considered whether an Alabama sheriff was a policymaker for the State or the county for purposes of liability under 42 U.S.C. § 1983 when acting in a law enforcement capacity.[44] The Court noted that in determining a local government's § 1983 liability, a court's task is to "identify those who speak with final policymaking authority for the local government actor concerning the action alleged to have caused the constitutional violation at issue."[45] This Court began by holding that the question of whether the sheriff was a policymaker for the State or the county depended on state law, and for that reason the analysis of the Eleventh Circuit Court of Appeals, most familiar with the state law concepts at issue, would be entitled to considerable deference.[46] In *McMillian*, this Court framed the question as whether, under Alabama law, a sheriff is a policymaker for the State or the county when he acts in a law enforcement capacity.[47]

In answering the question in *McMillian*, this Court reviewed the Alabama Constitution, Code, and Eleventh Circuit and the Alabama Supreme Court precedent construing such authority. In particular, this Court considered the Alabama Constitution, which designated sheriffs as "constitutional officers" and members of the "executive

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[44] *McMillian*, 520 U.S. 781, 117 S.Ct. 1734 (1997).

[45] *McMillian*, 520 U.S. at 785 (*citing Jett v. Dallas Indep. School Dist.*, 491 U.S. 701, 737, 109 S.Ct. 2702, 2723-2724 (1989)).

[46] 520 U.S. at 786, 117 S.Ct. at 1734.

[47] *Id.*

department" of state government, with only the State Supreme Court and Governor empowered to impeach sheriffs.[48] The Alabama Code defined sheriffs' duties as primarily acting on behalf of the state courts, with a responsibility to submit reports and evidence collected in investigating crimes to the district attorney.[49] Under Alabama law, county governing bodies were found to have no power to instruct a sheriff on how to carry out the duties of his or her office.[50] In a point designated as critical by the *McMillian* Court, the Alabama Supreme Court had concluded from its review of State constitutional and statutory provisions that sheriffs were executive officers of the state, and had held unequivocally: "sheriffs are state officers, and . . . claims brought against sheriffs based on their official acts therefore constitute suits against the State, not suits against the sheriff's county."[51] This Court ultimately held that an Alabama sheriff acting in a law enforcement capacity acts as a policymaker for the State.

The *McMillian* Court considered and rejected several factors argued to show that an Alabama sheriff should be considered a county officer. For example, the Court noted the sheriff's salary was paid out of the county treasury, the county was required to fund the expenses of the sheriff's office "to the extent reasonably needed for the proper and efficient conduct of the affairs of the sheriff's office," the sheriff's jurisdiction was limited to the borders

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[48] 520 U.S. at 788-789, 117 S.Ct. at 1738-1739.

[49] 520 U.S. at 789-790, 117 S.Ct. at 1739.

[50] 520 U.S. at 788-789, 117 S.Ct. at 1738-1739 (Under Alabama law, governing body of counties cannot instruct the sheriff how to ferret out crime, how to arrest a criminal, or how to secure evidence of a crime).

[51] 520 U.S. at 789, 117 S.Ct. at 1738.

of his county, and the sheriff was elected locally by county voters.[52] Such factors were found by the *McMillian* court to be insufficient to overcome the constitutional, statutory and case decisions holding that Alabama sheriffs were policymakers for the state when acting in their law enforcement capacity.

In this case, the Georgia Court of Appeals followed the analysis set forth in *McMillian* and determined that former sheriff Dorsey was not a policymaker for the County functions at issue: the use of deadly-force and use of law enforcement personnel and resources. Similar to *McMillian,* the Georgia Court of Appeals examined the Georgia Constitution, Georgia statutes, and interpretive case law. The Georgia Court of Appeals considered that the Georgia constitution, while nominally designating the sheriff as a "county officer," grants the legislature exclusive authority to establish a sheriff's powers, duties, qualifications and minimum salary.[53] Further, the Georgia constitution specifically exempts the sheriff's office from modification by counties pursuant to their local legislative powers.[54] Georgia law defines a sheriff's duties,[55] providing that the sheriff alone has the power to hire and fire his deputies and sheriffs,[56] and that only the Governor of the

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[52] 520 U.S. at 791, 117 S.Ct. at 1740.

[53] *See* the decision of the Georgia Court of Appeals in this matter, attached to the Petition, App. 10a, *citing* Ga. Const. of 1983, Art. IX, § 1, ¶ III(a)-(b); *See also Chaffin v. Calhoun*, 262 Ga. 202, 203, 415 S.E.2d 906 (1992).

[54] Petition, App. 12a, n.31; *See* Ga. Const. of 1983, Art. IX, § 2, ¶ 1(c).

[55] Petition, App. 10a, n.20, *citing* O.C.G.A. § 15-16-10.

[56] Petition, App. 12a, *citing* O.C.G.A. § 15-16-23.

State of Georgia is authorized to suspend a Georgia sheriff.[57]

On an aspect of the analysis deemed *critical* by the *McMillian* Court, the Georgia Supreme Court's decisions interpreting the Georgia constitution and State law support, if not require, the conclusion that the former sheriff was a policymaker for the State with respect to the use of deadly-force and law enforcement personnel and resources. The Georgia Supreme Court has held that the "sheriff is an elected, constitutional officer; he is subject to the charge of the General Assembly and is not an employee of the county commission."[58] The Georgia Supreme Court has similarly held that deputy sheriffs are employees of the sheriff, not the county, and the county cannot be held vicariously liable for the negligence of sheriff's deputies.[59] While Georgia county commissions set the sheriff's budget and must provide reasonably sufficient funds to allow the sheriff to discharge his legal duties, a county "may not dictate to the sheriff how that budget will be spent in the exercise of his duties."[60] Moreover, like in *McMillian*, only the Governor of the State of Georgia is authorized to suspend a Georgia sheriff.[61]

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[57] Petition, App. 12a, *citing* O.C.G.A. § 15-16-26(c).

[58] Petition, App. 10a-11a, *citing Bd. of Commrs. Of Randolph County v. Wilson*, 260 Ga. 482, 396 S.E.2d 903 (1990), *Bd. of Commrs. Of Dougherty County v. Saba*, 278 Ga. 176, 177, 598 S.E.2d 437 (2004) and *Mayo v. Fulton County*, 220 Ga. App. 825, 470 S.E.2d 258 (1996).

[59] Petition, App. 12a, *citing Lowe v. Jones County*, 231 Ga. App. 372, 373, 499 S.E.2d 348 (1998), *Brown v. Jackson*, 221 Ga. App. 200, 201, 470 S.E.2d 786 (1996), *Wayne County v. Herrin*, 210 Ga. App. 747, 751, 437 S.E.2d 793 (1993).

[60] Petition, App. 13a, n.33-35; *See Chaffin*, 262 Ga. at 203.

[61] Petition, App. 12a.

Further, in an extensive opinion, the Eleventh Circuit Court of Appeals in *Grech* held that a Georgia sheriff was not a policymaker for the county when acting in his law enforcement function and, more specifically, with regard to maintenance of a computer warrant system.[62] *Grech* noted among other things that "[t]here is not a single Georgia case . . . holding a *county* liable for the torts of a sheriff or his deputies."[63] *Grech* was referred to as persuasive and extensively cited by the Georgia Court of Appeals in its decision in this case.[64]

Considering Georgia state constitutional and statutory authority, and the Georgia appellate court and Eleventh Circuit Court of Appeals opinions construing such authority, it is clear that Georgia sheriffs are policymakers for the state on the functions at issue in this case. The Georgia Court of Appeals properly applied the *McMillian* analysis when it evaluated the Georgia constitution, statutes and case law to answer the question of whether former sheriff Dorsey was a policymaker for the State or the County on use of deadly-force and use of law enforcement personnel and resources. Like sheriffs in Alabama, the powers and duties of Georgia sheriffs are dictated by the State, with only State officials having any oversight or control of sheriffs. Like in *McMillian*, the Georgia law in favor of Respondent's position outweighs any provisions of law that cut in favor of the conclusion that Georgia sheriffs are county policymakers.[65] This Court should deny Petitioner's request for certiorari because the Georgia

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[62] Petition, App. 10a, n.23, *citing Grech*, 335 F.3d at 1348.

[63] Petition, App. 11a; *Grech*, 335 F.3d at 1342 n.32.

[64] *Id.*

[65] *Compare McMillian*, 520 U.S. at 1740.

Court of Appeals properly analyzed the relevant question, with its analysis closely following the analytical framework set forth by this Court in *McMillian*.

CONCLUSION

For the reasons set forth herein, the Petition for Certiorari should be denied.

Respectfully submitted,

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APPENDIX

IN THE SUPERIOR COURT OF GWINNETT COUNTY STATE OF GEORGIA

PHYLLIS BROWN, Individually as surviving spouse and as Executrix of the Estate of DERWIN BROWN, deceased,	)	
Plaintiffs,	)	**CIVIL ACTION FILE NO.: 02-A-12772**
vs.	)	
SIDNEY DORSEY, in his Individual Capacity, SECURITY INVESTIGATION DIVISION, INC., MECCA SECURITY, INC., MELVIN D. WALKER, in his Individual Capacity, PATRICK CUFFY, in his Individual Capacity, PAUL SKYERS, DAVID I. RAMSEY, and DEKALB COUNTY,	)	
Defendants.	)	

COMPLAINT

(Filed Nov. 21, 2002)

COMES NOW Phyllis Brown, Plaintiff in the above-styled action, and shows this Court as follows:

JURISDICTION AND VENUE

1.

Plaintiff Phyllis Brown is a citizen of the State of Georgia.

2.

Defendant Sidney Dorsey, the former Sheriff of DeKalb County, is presently a prisoner in the custody of the State of Georgia. Prior to his incarceration, Defendant Sidney Dorsey was most recently known to reside in DeKalb County at 1891 Montvallo Terrace SE, Atlanta, GA 30316-2812. Defendant Sidney Dorsey is a joint tortfeasor with Defendant Paul Skyers, hence jurisdiction and venue are proper in this Court.

3.

Defendant Security Investigation Division, Inc. (hereinafter "SID") is a Georgia Corporation with its principal place of business in DeKalb County, Georgia. Defendant can be served in DeKalb County through its registered agent, Sherry Dorsey, 1891 Montvallo Terrace SE, Atlanta, GA 30316-2812. Defendant SID is a joint tortfeasor with Defendant Paul Skyers, hence jurisdiction and venue are proper in this Court.

4.

Defendant Mecca Security, Inc. (hereinafter "Mecca") is a Georgia Corporation with its principal place of business in Georgia. Defendant can be served in Rockdale County through its registered agent, Veleria Askew Walker, 3685 Sweet Briar Lane SE, Conyers, GA 30094-3862. Defendant Mecca is a joint tortfeasor with Defendant Paul Skyers, hence jurisdiction and venue are proper in this Court.

5.

Defendant Melvin D. Walker (hereinafter "Walker") is a former Deputy and/or Jailor at the DeKalb County Sheriff's Department. Walker is also the Chief Executive Officer of Defendant Mecca. He can be served in Rockdale County at his place of residence, 3685 Sweet Briar Lane SE, Conyers, GA 30094-3862. Defendant Walker is a joint tortfeasor with Defendant Paul Skyers, hence jurisdiction and venue are proper in this Court.

6.

Defendant Patrick Cuffy (hereinafter "Cuffy") is a former Deputy and/or Jailor at the DeKalb County Sheriff's Department. Defendant Cuffy's last known place of residence was in DeKalb County at 3785 Caseys Cove, Ellenwood, GA 30294. Defendant Cuffy is a joint tortfeasor with Defendant Paul Skyers, hence jurisdiction and venue are proper in this Court.

7.

Defendant Paul Skyers (hereinafter "Skyers") can be served in Gwinnett County at his place of residence, 4398 Redgate Rd NW, Norcross, GA 30093. Jurisdiction and venue are proper in this Court.

8.

Defendant DeKalb County is a political subdivision of the State of Georgia, able to sue and be sued. Defendant DeKalb County can be served by means of service of process upon the Chief Executive Officer, Vernon Jones, at his office at Maloof Center, Sixth Floor, Government

Administration, 1300 Commerce Drive, Decatur, GA 30030. Defendant DeKalb County is a joint tortfeasor with Defendant Skyers, hence jurisdiction and venue are proper in this Court.

9.

Defendant David I. Ramsey (hereinafter "Ramsey") is presently living in St. Croix, VI. Defendant Ramsey is a joint tortfeasor with Defendant Skyers, hence jurisdiction and venue are proper in this Court.

10.

During the year 2000, Defendant Ramsey inflicted tortuous injuries upon Plaintiff and her decedent, Derwin Brown, as described hereafter. Both said tortuous acts and injuries occurred in Georgia. Subsequently, Defendant Ramsey subsequently left the State of Georgia, and, as of the date of the filing of this Complaint, no longer resides within the State of Georgia. Defendant Ramsey is thus subject to the personal jurisdiction of this Court under the Georgia Long Arm Statute, O.C.G.A. § 9-10-91, and is amenable to service of process as provided in O.C.G.A. § 9-10-94.

FACTUAL ALLEGATIONS

11.

Defendant Sidney Dorsey was the Sheriff of DeKalb County, Georgia from January 1, 1997 through December 31, 2000.

12.

As Sheriff of DeKalb County, Defendant Sidney Dorsey was Defendant DeKalb County's managing officer with ultimate policymaking authority on all matters pertaining to (1) the duties and assignments of DeKalb Jailors, Sheriff's Deputies, and other Sheriff's Department personnel, (2) the policies, procedures, and operation of the DeKalb County Jail, (3) the policies and procedures governing the service of legal process, subpoenas, and arrest warrants within DeKalb County, (4) the provision of security at the DeKalb County Courthouse, and (5) the policies and procedures governing the conduct and employment of Sheriff's Department personnel.

13.

During his tenure as Sheriff, Defendant Sidney Dorsey was also the owner or part owner of Defendant SID. Defendant Sidney Dorsey had managerial authority over the operations of Defendant SID.

14.

During the year 2000, Derwin Brown ran against Defendant Sidney Dorsey for the office of Sheriff and defeated Defendant Sidney Dorsey in the primary run-off election, with the result that Defendant Sidney Dorsey's tenure in office expired December 31, 2000.

15.

During his 2000 election bid against Defendant Sidney Dorsey, Derwin Brown campaigned for office on a platform that called for a state criminal investigation of

the administration at the DeKalb County jail, a reorganization of the DeKalb Sheriff's Office reservist program, a private accounting audit and the implementation of a merit hiring procedure.

16.

Derwin Brown called the DeKalb County Jail "a cesspool of corruption."

17.

Between August 8, 2000 and August 31, 2000, Defendant Sidney Dorsey solicited and enlisted Defendants Cuffy, Ramsey, Skyers, and Walker to kill Derwin Brown.

18.

As of August, 2000, Defendants Walker and Cuffy worked for the DeKalb County Sheriff's Office as Deputies and/or Jailors.

19.

As of August, 2000, Defendant SID employed or had employed Defendants Cuffy, Ramsey, Skyers, and Walker as providers of security services.

20.

As of August, 2000, Defendant Walker was an owner or part owner, as well as employee, of Defendant Mecca.

21.

As of August, 2000, Defendant Mecca employed or had employed Defendant Skyers as a provider of security services.

22.

Between August 8, 2000, and December 15, 2000, Defendant Sidney Dorsey met with Defendants Cuffy, Walker, Ramsey, and Skyers in DeKalb County for the purpose of planning how and where Derwin Brown could be murdered.

23.

Between August 8, 2000, and December 15, 2000, Defendants Cuffy, Walker, Ramsey, and Skyers conducted surveillance, in DeKalb County and elsewhere, on Derwin Brown personally and on his residence.

24.

Between August 8, 2000, and December 15, 2000, Defendants Cuffy, Walker, Ramsey, and Skyers obtained firearms for the purpose of killing Derwin Brown.

25.

Between August 9, 2000, and August 12, 2000, in DeKalb County, Defendant Sidney Dorsey reassigned Defendant Cuffy from the Jail Division to Community Relations in order to allow Defendant Cuffy to more easily participate in the planning and execution of the conspiracy to murder Derwin Brown.

26.

On or about September 23, 2000, in DeKalb County, DeKalb County Board of Education School Resource Officer Karey Harris encountered Defendant Cuffy and/or Defendants Walker, Ramsey, and Skyers during an aborted attempt to murder Derwin Brown at his residence or to conduct surveillance of Derwin Brown for the purpose of facilitating his murder. Defendant Sidney Dorsey stated to School Resources Officers that Defendant Cuffy was on a special assignment for Defendant Sidney Dorsey.

27.

Between August 8, 2000, and December 15, 2000, Defendants Sidney Dorsey, Cuffy, Walker, Ramsey, and Skyers discussed the consideration or compensation that Defendants Ramsey, Skyers, and Walker would receive for their participation in the murder of Derwin Brown.

28.

On or about October 30, 2000, Defendant Sidney Dorsey ordered Sheriffs Department personnel to hire, on an expedited basis, Defendants Skyers and Ramsey, as consideration for Defendants Skyers' and Ramsey's participation in the conspiracy to murder Derwin Brown.

29.

Between August 8, 2000, and December 15, 2000, Defendant Dorsey ordered that Defendant Walker be given special consideration for admission to the Peace Officer Standards and Training (POST) Mandate School as

consideration for his participation in the conspiracy to murder Derwin Brown.

30.

Between August 8, 2000, and December 15, 2000, Defendants Sidney Dorsey, Cuffy, Walker, Ramsey, and Skyers discussed alibis for the time of the murder.

31.

On or about December 15, 2000, Defendants Walker, Ramsey, Cuffy, and Skyers traveled to the home of Derwin Brown.

32.

While present at the home of Derwin Brown, Defendant Walker intentionally and maliciously shc Derwin Brown and killed him.

33.

During the murder of Derwin Brown, Defendants Ramsey, Cuffy, and Skyers stood by ready to aid Defendant Walker in the event that Defendant Walker required help in committing the murder.

34.

Following the murder of Derwin Brown, Defendants Walker, Ramsey, Cuffy, and Skyers fled the scene together. Defendant Skyers drove the getaway car.

35.

In committing the murder of Derwin Brown, Defendants Walker, Ramsey, Cuffy, and Skyers acted on the orders of Defendant Sidney Dorsey.

36.

Defendants Sidney Dorsey, Cuffy, Walker, Ramsey, Skyers, SID, and Mecca acted in concert to plan, commit, and/or cover-up the murder of Derwin Brown.

37.

Defendants Sidney Dorsey, Cuffy, Walker, Ramsey and Skyers acted with the actual and malicious intent to inflict injury upon Derwin Brown.

COUNT I: WRONGFUL DEATH

38.

The averments set forth in paragraphs 1 through 37 above are hereby incorporated by reference as if fully set forth herein.

39.

Defendant Sidney Dorsey solicited Defendants Cuffy, Walker, Ramsey, and Skyers to commit the murder of Derwin Brown. Defendants Cuffy, Walker, Ramsey, and Skyers agreed to participate and did participate in the planning, preparation, and execution of the murder.

40.

Defendants Sidney Dorsey, Walker, Cuffy, Skyers, and Ramsey, in planning, shooting, or participating in the shooting of Derwin Brown, did unlawfully and with malice aforethought cause Derwin Brow 's death.

41.

At the time of the murder of Derwin Brown, Plaintiff Phyllis Brown was Derwin Brown's lawfully-married wife.

42.

Pursuant to O.C.G.A. § 51-4-2, Defendants Sidney Dorsey, Cuffy, Walker, Ramsey, and Skyers are liable to Plaintiff Phyllis Brown, in her capacity as the surviving spouse of Derwin Brown, for the full value of Derwin Brown's life.

43.

Additionally, Defendants Sidney Dorsey, Walker, Cuffy, Skyers, and Ramsey, in murdering Derwin Brown, acted with an intent to promote the interests of Defendants Mecca and/or SID. Said Defendants therefore acted within the scope of their employment to Defendants Mecca and/or SID.

44.

Therefore, pursuant to O.C.G.A. § 51-4-2 and the doctrine of respondeat superior, Defendants Mecca and SID are liable to Plaintiff Phyllis Brown, in her capacity as

the surviving spouse of Derwin Brown, for the full value of Derwin Brown's life.

COUNT II: SURVIVAL ACTION FOR PAIN AND SUFFERING

45.

The averments set forth in paragraphs 1 through 44 above are hereby incorporated by reference as if fully set forth herein.

46.

Defendant Sidney Dorsey solicited Defendants Cuffy, Walker, Ramsey, and Skyers to commit the murder of Derwin Brown. Defendants Cuffy, Walker, Ramsey, and Skyers agreed to participate and did participate in the planning, preparation, and execution of the murder.

47.

Defendants Sidney Dorsey, Walker, Cuffy, Skyers, and Ramsey, in planning, shooting, or participating in the shooting of Derwin Brown, did unlawfully and with malice aforethought cause Derwin Brown's death.

48.

Derwin Brown experienced pain and suffering, mental anguish, and emotional distress prior to his death.

49.

Defendants Sidney Dorsey, Cuffy, Walker, Ramsey, and Skyers are therefore liable to Plaintiff Phyllis Brown in her capacity as Executrix of Derwin Brown's estate for general damages for injuries caused to her husband, Derwin Brown.

50.

Additionally, Defendants Sidney Dorsey, Walker, Cuffy, Skyers, and Ramsey, in murdering Derwin Brown, acted with an intent to promote the interests of Defendants Mecca and/or SID. Said Defendants therefore acted within the scope of their employment to Defendants Mecca and/or SID.

51.

Therefore, pursuant to the doctrine of respondeat superior, Defendants Mecca and SID are liable to Plaintiff Phyllis Brown, in her capacity as Executrix of Derwin Brown's estate, for general damages for injuries caused to her husband, Derwin Brown.

COUNT III: ACTION FOR MEDICAL AND FUNERAL EXPENSES

52.

The averments set forth in paragraphs 1 through 51 above are hereby incorporated by reference as if fully set forth herein.

53.

Defendant Sidney Dorsey solicited Defendants Cuffy, Walker, Ramsey, and Skyers to commit the murder of Derwin Brown. Defendants Cuffy, Walker, Ramsey, and Skyers agreed to participate and did participate in the planning, preparation, and execution of the murder.

54.

Defendants Sidney Dorsey, Walker, Cuffy, Skyers, and Ramsey, in planning, shooting, or participating in the shooting of Derwin Brown, did unlawfully and with malice aforethought cause Derwin Brown's death.

55.

As the result of the murder of Derwin Brown, Derwin Brown's estate incurred special damages including medical and funeral expenses for Derwin Brown.

56.

Defendants Sidney Dorsey, Cuffy, Walker, Ramsey, and Skyers are therefore liable to Plaintiff Phyllis Brown in her capacity as Executrix of Derwin Brown's estate for special damages for injuries caused to her husband, Derwin Brown.

57.

Additionally, Defendants Sidney Dorsey, Walker, Cuffy, Skyers, and Ramsey, in murdering Derwin Brown, acted with an intent to promote the interests of Defendants Mecca and/or SID. Said Defendants therefore acted

within the scope of their employment to Defendants Mecca and/or SID.

58.

Therefore, pursuant to the doctrine of respondeat superior, Defendants Mecca and SID are liable to Plaintiff Phyllis Brown, in her capacity as Executrix of Derwin Brown's estate, for general damages for injuries caused to her husband, Derwin Brown.

COUNT IV: WRONGFUL DEATH RESULTING FROM THE VIOLATION OF FOURTEENTH AMENDMENT RIGHTS PROTECTED BY 42 U.S.C. § 1983

59.

The averments set forth in paragraphs 1 through 58 above are hereby incorporated by reference as if fully set forth herein.

60.

Defendant Sidney Dorsey employed the resources and manpower of the DeKalb County Sheriffs Department, including two deputies, Defendants Walker and Cuffy, to murder Derwin Brown.

61.

Defendants Sidney Dorsey, Walker, and Cuffy, acting jointly with Defendants Skyers and Ramsey, committed the murder of Derwin Brown under color of state law.

62.

As Sheriff of DeKalb County, Defendant Sidney Dorsey was the final policymaker for Defendant DeKalb County in matters concerning the use of deadly force by Sheriff's Department personnel, the direction and control of Deputies and Jailors, and the direction, control, and use of Sheriff's Department materials, equipment, and resources. Defendant DeKalb County therefore bears liability for the actions of Defendant Sidney Dorsey taken under color of state law.

63.

Defendants Sidney Dorsey, Walker, Cuffy, Ramsey, Skyers, and DeKalb County have therefore acted under color of state law by murdering Derwin Brown and have thereby deprived Derwin Brown of his life, liberty, and bodily integrity without due process of law in violation of Derwin Brown's rights as protected by the Fourteenth Amendment of the United States Constitution.

64.

As the actual and proximate result of the actions of Defendants as aforesaid, Derwin Brown died.

65.

At the time of the murder of Derwin Brown, Plaintiff Phyllis Brown was Derwin Brown's lawfully-married wife.

66.

Pursuant to 42 U.S.C. § 1983 and O.C.G.A. § 51-4-2, Defendants DeKalb County, Skyers, and Ramsey as well as Defendants Sidney Dorsey, Walker, and Cuffy in their individual capacities, are liable to Plaintiff Phyllis Brown, in her capacity as the surviving spouse of Derwin Brown, for the full value of Derwin Brown's life.

COUNT V: SURVIVAL ACTION FOR THE VIOLATION OF FOURTEENTH AMENDMENT RIGHTS PROTECTED BY 42 U.S.C. § 1983

67.

The averments set forth in paragraphs 1 through 66 above are hereby incorporated by reference as if hilly set forth herein.

68.

Defendant Sidney Dorsey employed the resources and manpower of the DeKalb County Sheriff's Department, including two deputies, Defendants Walker and Cuffy, to murder Derwin Brown.

69.

Defendants Sidney Dorsey, Walker, and Cuffy, acting jointly with Defendants Skyers and Ramsey, committed the murder of Derwin Brown under color of state law.

70.

As Sheriff of DeKalb County, Defendant Sidney Dorsey was the final policymaker for Defendant DeKalb County in matters concerning the use of deadly force by Sheriff's Department personnel, the direction and control of Deputies and Jailors, and the direction, control, and use of Sheriff's Department materials, equipment, and resources. Defendant DeKalb County therefore bears liability for the actions of Defendant Sidney Dorsey taken under color of state law.

71.

Defendants Sidney Dorsey, Walker, Cuffy, Ramsey, Skyers, and DeKalb County have therefore acted under color of state law by murdering Derwin Brown and have thereby deprived Derwin Brown of his life, liberty, and bodily integrity without due process of law in violation of Derwin Brown's rights as protected by the Fourteenth Amendment of the United States Constitution.

72.

As the actual and proximate result of the actions of Defendants as aforesaid, Derwin Brown died.

73.

Derwin Brown experienced pain and suffering, mental anguish, and emotional distress prior to his death.

74.

As a result of the murder of Derwin Brown, the estate of Derwin Brown incurred special damages including medical and funeral expenses.

75.

Pursuant to 42 U.S.C. § 1983, Defendants DeKalb County, Skyers, and Ramsey, as well as Defendants Sidney Dorsey, Walker, and Cuffy in their individual capacities, are liable to Plaintiff Phyllis Brown, in her capacity as Executrix of Derwin Brown's estate, for general and special damages for injuries caused to her husband, Derwin Brown. Furthermore, Plaintiff is entitled to an award of punitive damages to punish Defendants Sidney Dorsey, Walker, Cuffy, Ramsey, and Skyers for their intentional depravation of Plaintiff's constitutional rights and to deter said Defendants from similar misconduct in the future.

COUNT VI: WRONGFUL DEATH RESULTING FROM THE VIOLATION OF FIRST AMENDMENT RIGHTS PROTECTED BY 42 U.S.C. § 1983

76.

The averments set forth in paragraphs 1 through 75 above are hereby incorporated by reference as if fully set forth herein.

77.

Defendant Sidney Dorsey employed the resources and manpower of the DeKalb County Sheriff's Department,

including two deputies, Defendants Walker and Cuffy, to murder Derwin Brown.

78.

Defendant Dorsey murdered Derwin Brown to prevent Derwin Brown from taking office at the expiration of Dorsey's term.

79.

Defendants Sidney Dorsey, Walker, and Cuffy, acting jointly with Defendants Skyers and Ramsey, committed the murder of Derwin Brown under color of state law.

80.

As Sheriff of DeKalb County, Defendant Sidney Dorsey was the final policymaker for Defendant DeKalb County in matters concerning the use of deadly force by Sheriff's Department personnel, the direction and control of Deputies and Jailors, and the direction, control, and use of Sheriff's Department materials, equipment, and resources. Defendant DeKalb County therefore bears liability for the actions of Defendant Sidney Dorsey taken under color of state law.

81.

Defendants Sidney Dorsey, Walker, Cuffy, Ramsey, Skyers, and DeKalb County have therefore acted under color of state law by murdering Derwin Brown in retaliation for his exercising of his right to campaign for public office and to speak out on matters of public concern, as

protected by the First Amendment of the United States Constitution and as applied to the State of Georgia by the Fourteenth Amendment of the United States Constitution.

82.

As the actual and proximate result of the actions of Defendants as aforesaid, Derwin Brown died.

83.

At the time of the murder of Derwin Brown, Plaintiff Phyllis Brown was Derwin Brown's lawfully-married wife.

84.

Pursuant to 42 U.S.C. § 1983 and O.C.G.A. § 51-4-2, Defendants DeKalb County, Skyers, and Ramsey, as well as Defendants Sidney Dorsey, Walker, and Cuffy in their individual capacities, are liable to Plaintiff Phyllis Brown, in her capacity as the surviving spouse of Derwin Brown, for the full value of Derwin Brown's life.

COUNT VII: SURVIVAL ACTION FOR THE VIOLATION OF FIRST AMENDMENT RIGHTS PROTECTED BY 42 U.S.C. § 1983

85.

The averments set forth in paragraphs 1 through 84 above are hereby incorporated by reference as if fully set forth herein.

86.

Defendant Sidney Dorsey employed the resources and manpower of the DeKalb County Sheriff's Department, including two deputies, Defendants Walker and Cuffy, to murder Derwin Brown.

87.

Defendant Dorsey murdered Derwin Brown to prevent Derwin Brown from taking office at the expiration of Dorsey's term.

88.

Defendants Sidney Dorsey, Walker, and Cuffy, acting jointly with Defendants Skyers and Ramsey, committed the murder of Derwin Brown under color of state law.

89.

As Sheriff of DeKalb County, Defendant Sidney Dorsey was the final policymaker for Defendant DeKalb County in matters concerning the use of deadly force by Sheriff's Department personnel, the direction and control of Deputies and Jailors, and the direction, control, and use of Sheriff's Department materials, equipment, and resources. Defendant DeKalb County therefore bears liability for the actions of Defendant Sidney Dorsey taken under color of state law.

90.

Defendants Sidney Dorsey, Walker, Cuffy, Ramsey, Skyers, and DeKalb County have therefore acted under

color of state law by murdering Derwin Brown in retaliation for exercising of his right to campaign for public office and to speak out on matters of public concern, as protected by the First Amendment of the United States Constitution and as applied to the State of Georgia by the Fourteenth Amendment of the United States Constitution.

91.

As the actual and proximate result of the actions of Defendants as aforesaid, Derwin Brown died.

92.

Derwin Brown experienced pain and suffering, mental anguish, and emotional distress prior to his death.

93.

Additionally, as a result of the murder of Derwin Brown, the estate of Derwin Brown incurred special damages including medical and funeral expenses.

94.

Pursuant to 42 U.S.C. § 1983,Defendants DeKalb County, Ramsey, and Skyers, as well as Defendants Sidney Dorsey, Walker, and Cuffy in their individual capacities, are liable to Plaintiff Phyllis Brown, in her capacity as Executrix of Derwin Brown's estate, for general and special damages for injuries caused to her husband, Derwin Brown. Furthermore, Plaintiff is entitled to an award of punitive damages to punish Defendants Sidney Dorsey, Walker, Cuffy, Skyers, and Ramsey for their

intentional depravation of Plaintiff s constitutional rights and to deter said Defendants from similar misconduct in the future.

COUNT VIII: PUNITIVE DAMAGES

95.

The averments set forth in paragraphs 1 through 94 above are hereby incorporated by reference as if fully set forth herein.

96.

The actions of Defendants Sidney Dorsey, Cuffy, Walker, Ramsey, Skyers, SID, and Mecca as aforesaid show willful misconduct, malice, wantonness, oppression, or that entire want of care that would raise the presumption of conscious indifference to consequences, such that Plaintiff Phyllis Brown, in her capacity as Executrix of the Estate of Derwin Brown, is entitled to recover punitive damages to deter Defendants from similar wrongful conduct in the future in such amount as shall be determined by an impartial finder of fact.

ANTE LITEM NOTICE PRESENTED

97.

The averments set forth in paragraphs 1 through 96 above are hereby incorporated by reference as if fully set forth herein.

98.

On December 14, 2001, Plaintiff made written presentment of her claims for the official misconduct of Defendant Sidney Dorsey, including wrongful death, general damages, and special damages, to Defendant DeKalb County. Plaintiff presented said claims via letter to Vernon Jones, the Chief Executive Officer, and Thomas E. Brown, the current Sheriff of DeKalb County.

[Signatures on Next Page]

WHEREFORE Plaintiff prays,

(a) That summons issue and process be served upon Defendants;

(b) That Plaintiff have trial by a jury of twelve (12) persons;

(c) That Plaintiff, in her capacity as executrix of Derwin Brown's estate, recover general damages from Defendants Sidney Dorsey, SID, Mecca, Walker, Ramsey, Cuffy, Skyers, and DeKalb County in an amount to be determined in the enlightened conscience of a jury;

(d) That Plaintiff, in her capacity as executrix of Derwin Brown's estate, recover special damages from Defendants Sidney Dorsey, SID, Mecca, Walker, Ramsey, Cuffy, Skyers, and DeKalb County for medical and funeral expenses in amounts to be proven at trial;

(e) That Plaintiff, in her capacity as surviving spouse of Derwin Brown, recover damages from Defendants Sidney Dorsey, SID, Mecca, Walker, Ramsey, Cuffy, Skyers, and DeKalb County for the full value of Derwin Brown's

life, said amount to exceed fifty million dollars ($50,000,000.00);

(f) The Plaintiff recover punitive damages against Defendants SID, Mecca, Ramsey, and Skyers, as well as Defendants Sidney Dorsey, Walker, and Cuffy in their individual capacities, in an amount to be determined in the enlightened conscience of a jury;

(g) That Plaintiff recover her costs and attorney's fees in this action, pursuant to 42 USC § 1988, O.C.G.A.§ 13-6-11, and other applicable Federal and state law; and

(h) That Plaintiff have such other relief as this Court may deem just and proper.

Respectfully submitted this 21st day of November, 2002.

CASEY GILSON LEIBEL P.C.

By: /s/ Steven K. Leibel
STEVEN K. LEIBEL
Georgia State Bar No. 445050

/s/ George P. Shingler
GEORGE P. SHINGLER
Georgia State Bar No. 642850

MICHAEL T. MCCULLEY
Georgia State Bar No. 486989
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(770) 512-0300
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**IN THE SUPERIOR COURT OF
GWINNETT COUNTY
STATE OF GEORGIA**

PHYLLIS BROWN, Individually as surviving spouse and as Executrix of the Estate of DERWIN BROWN, deceased,	)	**CIVIL ACTION FILE NO.: 02-A-12722-7**
Plaintiffs,	)	
vs.	)	
SIDNEY DORSEY, in his Individual Capacity, SECURITY INVESTIGATION DIVISION, INC., MECCA SECURITY, INC., MELVIN D. WALKER, in his Individual Capacity, PATRICK CUFFY, in his Individual Capacity, PAUL SKYERS, DAVID I. RAMSEY, and DEKALB COUNTY,	)	
Defendants.	)	

AMENDED COMPLAINT

(Filed Aug. 15, 2003)

COMES NOW Phyllis Brown, Plaintiff in the above-styled action, and shows this Court as follows:

1.

Plaintiff incorporates paragraphs 1 to 98 of her original Complaint as fully and completely as if they were set forth verbatim herein.

2.

Plaintiff incorporates the "Wherefore" paragraph of her original Complaint as fully and completely as if it were set forth verbatim herein.

3.

Plaintiff hereby adds the following to her original Complaint as paragraph 99: In violating Derwin Brown's federally-protected constitutional rights, as alleged in Counts IV, V, VI, and VII of Plaintiff's Complaint, Defendant Sidney Dorsey acted, pursuant to his authority as Sheriff of DeKalb County, to implement a policy of keeping himself in office by eliminating his competition.

Respectfully submitted this 13th day of August, 2003.

CASEY GILSON LEIBEL P.C.

By: /s/ Steven K. Leibel
STEVEN K. LEIBEL
Georgia State Bar No. 445050

GEORGE P. SHINGLER
Georgia State Bar No. 642850

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(770) 512-0070 (fax)

IN THE SUPERIOR COURT OF GWINNETT COUNTY STATE OF GEORGIA

PHYLLIS BROWN,	)	**CIVIL ACTION FILE**
Plaintiff,	)	**NO.: 02-A-12722-7**
	)	
vs.	)	
SIDNEY DORSEY et al.,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served copies of the *Amended Complaint* upon all parties by depositing a true and exact copy of the same in the United States Mail with proper postage affixed and addressed as follows:

Xernia L. Fortson
DeKalb County Law Department
Senior Assistant County Attorney
1300 Commerce Drive, 5th Floor Decatur, GA 30030

Brian Steel
The Steel Law Firm, P.C.
Suite 300
1800 Peachtree Road, NW
Atlanta, GA 30309

Duane Jones
Duane Jones & Associates
Suite 117
5036 Snapfinger Woods Drive
Decatur, GA 30035

Albert A. Mitchell
Albert A. Mitchell, P.C.
The C&S Professional Building
3079 Campbellton Road, Suite 203
Atlanta, GA 30311

Security Investigation Division, Inc.
c/o Sherry Dorsey
1891 Montvallo Terrace SE
Atlanta, GA 30316-2812.

Paul Skyers
4398 Redgate Rd NW
Norcross, GA 30093.

Respectfully submitted this 13th day of August, 2003.

CASEY GILSON LEIBEL P.C.

/s/ Michael T. McCulley
Michael T. McCulley
Georgia Bar No.: 486989

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IN THE SUPERIOR COURT OF GWINNETT COUNTY STATE OF GEORGIA

PHYLLIS BROWN, Individually as surviving spouse and as Executrix of the Estate of DERWIN BROWN, deceased,	)	**CIVIL ACTION FILE NO.: 02-A-12722-7**
Plaintiffs,	)	
vs.	)	
SIDNEY DORSEY, PATRICK CUFFY, and PAUL SKYERS,	)	
Defendants.	)	

JUDGMENT

(Filed Nov. 24, 2004)

This action came on for trial before the court and a jury, Honorable Melodie Snell Conner presiding, and the issues having been duly tried and the jury having duly rendered its verdict on November 18, 2004,

It Is Ordered and Adjudged that:

1. Plaintiff Phyllis Brown, individually as surviving spouse of Derwin Brown, recover of defendants, jointly and severally, the sum of $250,108,398.00, with interest thereon at the rate of 12% as provided by law, and her costs of action.

2. Plaintiff Phyllis Brown, as the Executrix of the Estate of Derwin Brown, deceased, recover from defendants,

jointly and severally, the sum of $76,028,000.00, with interest thereon at the rate of 12% as provided by law, and her costs of action.

It Is Further Ordered and Adjudged, based on the jury's separate verdict on the punitive damages claim, that Plaintiff Phyllis Brown, as the Executrix of the Estate of Derwin Brown, deceased, recover of Defendants Sidney Dorsey, Patrick Cuffy and Paul Skyers, jointly and severally, the sum of $450,000.00 as punitive damages with interest thereon at the rate of 12% as provided by law, and her costs of action.

So ordered this 23rd day of November, 2004.

/s/ Melodie Snell Conner
Melodie Snell Conner, Judge
Superior Court of Gwinnett
County